

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition Nos.:** 49-801-16-1-4-01114-22  
49-801-17-1-4-01115-22  
49-801-18-1-4-01116-22  
49-801-19-1-4-01117-22  
49-801-20-1-4-01118-22  
49-801-21-1-4-01119-22  
**Petitioner:** Mac's Convenience Stores LLC  
**Respondent:** Marion County Assessor  
**Parcel:** 8020698  
**Assessment Years:** 2016, 2017, 2018, 2019, 2020 & 2021

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner filed the above captioned appeals for their property located at 4841 North Pennsylvania in Indianapolis on the following dates:

2016-2018:	September 24, 2019
2019:	June 1, 2020
2020:	June 15, 2021
2021:	March 28, 2022
  
2. On November 18, 2022, the Marion County Property Tax Assessment Board of Appeals ("PTABOA") sustained the following assessments:

2016:	Land: \$58,900	Improvements: \$361,200	Total: \$420,100
2017:	Land: \$58,900	Improvements: \$224,300	Total: \$283,200
2018:	Land: \$159,100	Improvements: \$214,900	Total: \$374,000
2019:	Land: \$159,100	Improvements: \$214,900	Total: \$374,000
2020:	Land: \$159,100	Improvements: \$218,900	Total: \$378,000
2021:	Land: \$159,100	Improvements: \$307,500	Total: \$466,600
  
3. The Petitioner timely appealed to the Board, electing to proceed under the small claims procedures.

4. On August 24, 2023, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Melissa Michie appeared as the Petitioner’s attorney. Brian Coppinger appeared as the Assessor’s attorney. Melissa Tetrick, Deputy Director of commercial/industrial assessments for the Assessor, testified under oath.

**Record**

6. The parties submitted the following exhibits:

Petitioner Exhibit 1:	2012 pay 2013 Marion County land order,
Petitioner Exhibit 2:	Google map of subject property’s location,
Petitioner Exhibit 3:	Emails between Pamela Layton, Tax Consultants, Inc. and Melissa Tetrick, Marion County Assessor’s office,
Petitioner Exhibit 4:	Emails between Melissa Michie and Melissa Tetrick,
Petitioner Exhibit 5:	2016 subject property record card,
Petitioner Exhibit 6:	2017 subject property record card,
Petitioner Exhibit 7:	2018 subject property record card,
Petitioner Exhibit 8:	2019 subject property record card,
Petitioner Exhibit 9:	2020 subject property record card,
Petitioner Exhibit 10:	2021 subject property record card,
Petitioner Exhibit 11:	<i>Bushmann, LLC v. Bartholomew County Assessor</i> , 187 N.E.3d 355 (Ind. Tax 2022).

Respondent Exhibit A:	2012 pay 2013 Marion County land order,
Respondent Exhibit C:	Washington C & I neighborhoods map,
Respondent Exhibit E:	Property record card for 2001 Broad Ripple Avenue,
Respondent Exhibit F:	Property record card for 5628 North Illinois Street,
Respondent Exhibit G:	Property record card for 2629 East 65 <sup>th</sup> Street,
Respondent Exhibit H:	Property record card for 7103 North Keystone Avenue,
Respondent Exhibit I:	Property record card for 7117 North Keystone Avenue. <sup>1</sup>

- a) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

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<sup>1</sup> The Respondent submitted Respondent Exhibits B, D and J through S, but did not offer them into evidence.

## Findings of Fact

7. The subject property is a gas station with a convenience store. In 2016 and 2017 the subject property had 0.17 acres of land. In 2018, an adjoining parcel was combined with the subject property for a total land size of 0.46 acres. *Pet'r Exs. 7-10.*

## Contentions

8. Summary of the Petitioner's case:
  - a) The Petitioner contends the Assessor incorrectly valued the subject property's land by applying an incorrect land base rate of \$8.00 per square foot from 2016 through 2021. In support of this, the Petitioner pointed to the 2012 Marion County land order which showed a \$4.00 to \$5.00 per square foot base rate for the area that included the subject property. The Petitioner further argued that failing to follow the land order was an objective error based on *Muir Woods Section One Assoc. Inc. v. Marion County Assessor*, 172 N.E.3d 1205 (Ind. 2021) and *Bushmann, LLC v. Bartholomew County Assessor*, 187 N.E.3d 355, 356 (Ind. Tax Ct. 2022). The Petitioner concluded its argument by stating:

[W]hat we are also asking the Board to do is making a determination whether or not the proper base rate was applied to the assessment.

The Petitioner did not specifically ask the Board to order any change in the assessment, or for any specific value. On its Form 130s, the Petitioner left the boxes for claimed value blank. *Michie argument; Pet'r Exs. 1-11.*

9. Summary of the Respondent's case:
  - a) Tetrick testified that in addition to the Land Order, other documents, including maps, are used to develop the assessment and that these documents were created in conjunction with the Land Order. She noted that the subject property and other gas stations in the same neighborhood were assessed at \$8.00 per square foot for the years at issue. According to Tetrick, the subject property has never been assessed at \$4.00 or \$5.00 per square foot. Finally, Tetrick testified that she did not know whether the additional documents were submitted to the PTABOA with the land order. *Tetrick testimony; Resp't Exs. A & C.*
  - b) The Assessor argued that *Muir Woods* and *Bushmann* only speak to the statute of limitations of a correction of error appeal, and accordingly they do not eliminate a Petitioner's burden to provide objective market data to support their contentions. *Coppinger argument.*

## Analysis

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2<sup>2</sup> and 6-1.1-15-20 created exceptions to this general rule under certain circumstances, but the Petitioner has failed to argue those exceptions are applicable here. We find the Petitioner failed to make a prima facie case for reducing the assessments for the following reasons:

### A. The Petitioner failed to ask for any specific relief.

- a) We begin by noting that the Petitioner failed to ask for any specific relief, either in the form of a proposed value or a request for the Board to order a reassessment. Rather, it only asked the Board to determine whether the proper base rate was applied to the assessment. The Board does not issue advisory opinions. In addition, it is the taxpayer's duty to walk the Board through every element of its analysis. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). And the Board is not permitted to act as an advocate for the parties. *CVS Corp v. Prince*, 149 N.E.3d 323 (Ind. Tax Ct. 2020). For these reasons, the Petitioner's failure to request any specific relief is fatal to its petitions. Nonetheless, we will examine the Petitioner's arguments to the extent we are able given the record.

### B. The Petitioner failed to show the Assessor used the wrong base rate.

- b) The Petitioner argued that the Assessor did not apply the correct base rate according to the County's 2012 Land Order.<sup>3</sup> The Assessor claimed that other documents, such as maps, were developed in conjunction with the land order and that those documents were used to arrive at the base rate. Neither the property tax statutes nor the Department of Local Government Finance's regulations use the term "land order." But the Tax Court has explained that "[l]and orders provide the base rates that are to be applied to the land in each of the townships throughout a county." *Bushmann*, 187 N.E.3d at 356. The Court cited to I.C. § 6-1.1-4-13.6 as well as chapter 2 of the 2011 Real Property Assessment Guidelines and the 50 IAC 2.4-1-2(c) (2011), the administrative rule incorporating those Guidelines. *Id.*
- c) I.C. § 6-1.1-4-13.6 provides, in relevant part:

Sec. 13.6. (a) The county assessor shall determine the values of all classes of commercial, industrial, and residential land (including farm homesites) in the county using guidelines determined by the department of local government finance. The assessor determining the values of land shall

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<sup>2</sup> I.C. § 6-1.1-15-17.2 was repealed by P.L. 174-2022 on March 21, 2022.

<sup>3</sup> It is unclear from the record why the Assessor used the 2012 Land Order for assessment years as late as 2021, but both parties agree the 2012 Land Order was the only land order in effect during the years at issue.

submit the values to the county property tax assessment board of appeals by the dates specified in the county's reassessment plan under section 4.2

...

(c) The county assessor shall notify all township assessors in the county (if any) of the values. Assessing officials shall use the values determined under this section.

I.C. § 6-1.1-4-13.6.

- d) In addition, an Assessor need not amend a land order to change base rates. Assessors are tasked with adjusting assessments annually and can set new base rates as part of that process. *See* 50 IAC 27-5-7 (a)-(b) (2010) (requiring assessors to review land values as part of the annual adjustment process and directing them to set new base rates if they determine the existing rates need to be modified). The land valuation statute does not require assessors to “amend” the land order to do so.
- e) Under this framework, it is difficult for us to say that the Assessor erred by using other documents in conjunction with the Land Order to arrive at a base rate, especially given Tetric’s testimony that this was how the Land Order was intended to be used. Although Tetric could not say whether those documents were presented to the PTABOA, the Petitioner did not establish that they were not.
- f) Finally, although I.C. § 6-1.1-4-13.6(c) mandates the Assessor “use the land values determined under this section,” it does not provide that true tax value necessarily equals the values determined by using those rates. Even if the Assessor erred in applying the base rates, it has long been the case that simply attacking the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property’s market value-in-use. *Id.*; *see also P/A Builders 7 Developers, LLC v. Jennings Co. Ass’r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value is). To do so, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.* Neither *Chevrolet of Columbus, Inc. v. Bartholomew Cty. Ass’r*, 187 N.E.3d 349, 352-53 (Ind. Tax Ct. 2022), *Bushmann*, or the Indiana Supreme Court decision in *Muir Woods* purport to overrule those principles. Indeed, the Petitioner in effect asks us to hold that the *Town of St. John* cases and the market value-in-use standard do not apply to whatever portion of an assessment is allocated to the land. Those cases offer no support for retreating from the precedent that challenges to assessments must be based objectively verifiable data.

**C. Any potential relief would require the use of subjective judgment, thus rendering the appeals untimely.**

- g) We also find that any potential relief the Petitioner may be entitled to would require us to exercise subjective judgment, something not permitted under the statutory provision that the Petitioner appealed under. We begin with an overview of Indiana’s property tax appeal procedures, as this appeal falls outside the norm. I.C. § 6-1.1-15-1.1 establishes the deadlines for filing an initial property tax appeal. Under that statute, a taxpayer could raise claims of error relating to the “assessed value of property” or relating to five other categories, including “[a] clerical, mathematical, or typographical mistake[,]” or “[t]he legality or constitutionality of a property tax or assessment.” I.C. § 6-1.1-15-1.1(a).
- h) The statute lays out relatively short deadlines for filing an appeal challenging a property’s assessed value. For real property assessments before January 1, 2019, a taxpayer had to file by the earlier of: “(A) forty-five (45) days after the date on which the notice of assessment is mailed by the county; or (B) forty-five (45) days after the date on which the tax statement is mailed by the county treasurer. . . .” I.C. § 6-1.1-15-1.1(b)(1). For January 1, 2019, and later assessments, a taxpayer had to file its appeal by the earlier of “(A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or (B) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year.” I.C. § 6-1.1-15-1.1(b)(2).
- i) But the statute provides a much longer deadline for filing appeals raising claims of error related to the other enumerated categories. A taxpayer can file an appeal seeking to correct those types of errors up to three years “after the taxes were first due.” I.C. § 6-1.1-15-1.1(b).
- j) The Petitioner does not claim that it filed its appeals within the deadlines for challenging the assessed value of its property. For 2016-2020 it indicated on its Form 130 petitions that it was claiming “[a] clerical, mathematical, or typographical mistake.” For 2021, it checked the box “[t]he legality or constitutionality of a property tax or assessment.” As discussed above, the Petitioner argued that this mistake or illegality was the failure of the Assessor to apply the proper base rate according to the Land Order.
- k) Under the previous statutory regime there were two main appeal procedures: one for general appeals, which could include any challenge to an assessment, including challenges to the methodology used to determine the assessment, and another for correction of narrowly enumerated errors. The general appeal statute— Ind. Code § 6-1.1-15-1 (2016)—had relatively short filing deadlines akin to those now contained

in Ind. Code § 6-1.1-15-1.1(b)(1) for errors related to a property's assessed value. The deadlines under correction-of-error statute—Ind. Code § 6-1.1-15-12 (2016)—varied. Depending on the year, there was either no filing deadline or a deadline of three years after the taxes were first due. See, e.g., *Hutcherson v. Ward*, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013); *Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1075 (Ind. Tax Ct. 2006); 2014 Ind. Acts 183, § 19. Different appeal forms were used under the two procedures: Forms 130/131 for appeals under the general statute and Form 133 for corrections of error. *Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208, 1210 (Ind. Tax Ct. 2015) *review den.*

- l) Under case law interpreting that old regime, determining which appeal statute (and accompanying procedures) applied turned on whether the taxpayer claimed an error that could be corrected “without resort to subjective judgment and according to objective standards.” *Chevrolet of Columbus, Inc.* 187 N.E.3d at 352-53 (*quoting Muir Woods*, 36 N.E.3d at 1213). If a “simple true or false finding of fact” dictated an issue’s resolution, the claimed error was considered objective and could properly be challenged using a Form 133 and the correction of error process. *Square 74 Assocs., LLC v. Marion Cty. Ass’r*, 138 N.E.3d 336, 343 (Ind. Tax Ct. 2019). Otherwise, a taxpayer had to use Forms 130/131 and the general appeal process.
- m) The Tax Court recently explained that when the Legislature repealed the old correction of error and general appeal statutes and enacted I.C. § 6-1.1-15-1.1, it adopted a single form for filing appeals relating to property assessments. *Chevrolet*, 187 N.E.3d at 354. But the Court found that the Legislature did not eliminate “the long-standing distinction between objective and subjective errors for purposes of the correction of error appeal procedure” that had existed under the old statutory scheme, and it observed that “[f]or the most part,” the list of objective errors under the new appeal statute are “the same types of errors” previously listed in the correction-of-error statute. *Id.*<sup>4</sup>
- n) As discussed above, the Petitioner claimed that the Assessor erred by not applying a base rate of \$4.00-\$5.00 per square foot to the subject property. This is the extent of the Petitioner’s claim. It did not make any argument about whether the assessment should be \$4.00 per square foot, \$5.00 per square foot, or somewhere in-between. Nor did it request any specific value or submit a proposed assessment. Given these facts, it is impossible for us to grant any relief without resorting to subjective

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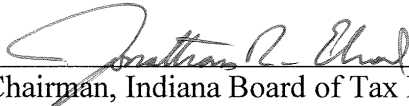
<sup>4</sup> The legislature never adopted language in I.C. § 6-1.1-15-12 or anywhere else creating the subjective/objective standard. The Tax Court proposed the standard in *Hatcher v. State Bd of Tax Comm'rs*, 561 N.E.2d 852,857 (Ind. Tax Ct. 1990) by incorporating language from a repealed New Jersey statute. It seems more likely that had the legislature intended to retain the *Hatcher* standard it would have incorporated that language in the new statute. Moreover, it is unclear why the objective/subjective standard has any purpose under the market value-in-use regimen where methodological challenges must fail.

judgment. For those reasons, the Petitioner's claims are untimely and should have been filed under the earlier deadlines of I.C. § 6-1.1-15-1.1(a)(1).

### Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2016-2021 assessments.

ISSUED: NOVEMBER 20, 2023

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.